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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. KENT JOY WILLIAMS, Defendant and Appellant.	D043196 (Super. Ct. No. SCD172625)

APPEAL from a judgment of the Superior Court of San Diego County, Albert T. Harutunian III, Judge. Affirmed.

Appellant Kent Joy Williams was found guilty by a jury of two counts of residential burglary (Pen. Code,[1] § 459) and one count of unlawfully taking and driving a vehicle (Veh. Code, § 10851, subd. (a)). He admitted four prior residential burglary

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1 All further statutory references are to the Penal Code unless otherwise specified.

convictions. The trial court sentenced appellant to prison for 50 years to life, consisting of two consecutive 25-year-to-life terms for the two burglaries (counts 1 and 2) and a concurrent 25-year-to-life term for the unlawful driving and taking of a vehicle (count 3). Appellant's sole contention in this appeal is that the trial court should have stayed, under section 654, the concurrent sentence it imposed on count 3 for the unlawful driving and taking of the vehicle. For reasons explained in this opinion we reject this contention and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The evidence, briefly recounted in the light most favorable to the judgment, proved that on January 30, 2003, appellant burglarized the apartment residence of Katrina Hensley on Boundary Street in San Diego, taking a purse and a set of car keys from the couch inside the apartment. Appellant emptied the purse of its contents and abandoned it in the alley behind the apartment. He used the keys to drive away in a truck parked in front of the apartment. Appellant drove the truck for three hours, until it ran out of gas.

The next day, appellant burglarized the apartment residence of Alanna Janssen on Swift Avenue in San Diego, stealing money and jewelry. Appellant was arrested the same afternoon.

At the time of his arrest, appellant possessed a wallet, Social Security card and driver's license taken from Ms. Hensley's apartment; a small black jewelry box taken from Ms. Janssen's apartment; and a set of keys. After being advised of his *Miranda* rights (*Miranda v. Arizona* (l966) 384 U.S. 436), appellant admitted entering Ms. Janssen's apartment and stealing her personal property. Appellant said he had been

smoking cocaine for several weeks and needed some money. Appellant claimed he obtained Ms. Hensley's red pickup truck and her personal items from a man known as "Doc." Appellant said "Doc" told him the truck was stolen. Appellant admitted driving the truck around for three hours until it "died on him." Then he parked it. The detective who questioned appellant located the truck by following directions given to him by appellant.

Appellant was charged with two counts of residential burglary in violation of Penal Code section 459; one count of unlawful taking and driving of a vehicle in violation of Vehicle Code section 10851, subdivision (a); and one count of receiving, concealing, selling, or withholding a motor vehicle in violation of Penal Code section 496d. During trial, the prosecutor's motion to dismiss the latter count was granted. The jury found appellant guilty of all remaining counts.

DISCUSSION

At appellant's sentencing hearing, the court found that the burglary charged in count 1 and the unlawful taking of a vehicle charged in count 3, "arose on the same occasion within the meaning of the sentencing statutes." The significance of this finding was that the court was not *required* to impose consecutive prison terms pursuant to section 667, subdivision (c)(6).[2] Instead, it had discretion to impose concurrent

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2 Section 667, subdivision (c)(6) provides: "If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e)."

sentences for the two crimes. (*People v. Hendrix* (1997) 16 Cal.4th 508, 512.) The court exercised this discretion to appellant's benefit at the encouragement of the prosecutor.[3]

Appellant now contends the trial court should have made the additional finding that the burglary and the unlawful taking and driving of the vehicle were part of one continuous transaction motivated by the single objective to steal within the meaning of section 654's prohibition against multiple punishment. We address the merits of this issue even though it was not raised in the trial court because it implicates appellant's right to be sentenced to a punishment authorized by law. (*People v. Scott* (1994) 9 Cal.4th 331, 354, fn. 17.)

Section 654 prohibits multiple punishment for crimes committed pursuant to a single objective in one continuous transaction. (*People v. Hicks* (1993) 6 Cal.4th 784, 789.) On the other hand, "[w]here a defendant entertains multiple criminal objectives independent of and not merely incidental to each other, he may be punished for more than one crime even though the violations share common acts or are parts of an otherwise indivisible course of conduct." (*People v. Blake* (1998) 68 Cal.App.4th 509, 512, citing *People v. Beamon* (1973) 8 Cal.3d 625, 639.) When, as in this case, a trial court imposes

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[3] Respondent now contends this exercise of discretion was erroneous, relying on this Court's opinion in *People v. Durant* (1999) 68 Cal.App.4th 1393. We do not reach this issue for two reasons: (1) The prosecutor *encouraged* the trial court to run the sentence concurrently, thus inviting the sentence of which respondent complains; and (2) the People have not appealed or cross-appealed the judgment. (Cf. *People v. Jordan* (1986) 42 Cal.3d 308, 312, fn. 2.) In any event, this case is distinguishable from *Durant* in that the two crimes in question in this case were committed at essentially the same time and location, inside and outside one apartment belonging to one victim.

concurrent sentences for two factually related crimes, the implicit finding that they were *not* part of one continuous transaction conducted for a single objective is inherent in the judgment. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1147; *Blake*, at p. 512; *People v. Brown* (1991) 234 Cal.App.3d 918, 933.) Our review of that implied finding is conducted under the substantial evidence rule (*Blake*, at p. 512), viewing the evidence in the light most favorable to the judgment and presuming the existence of every fact reasonably deduced from the evidence. (*People v. Holly* (1976) 62 Cal.App.3d 797, 803.) We reverse only if the trial court's finding is not supported by substantial evidence. (*People v. See* (1980) 109 Cal.App.3d 76, 80.)

Applying this rule, the evidence supports the reasonable conclusion that appellant did not commit the burglary in order to steal the truck. Nor did he steal the truck in order to commit the burglary. The burglary was complete when he entered the apartment with the intent to steal. (*People v. Barry* (1892) 94 Cal. 481, 482.) The evidence supports the reasonable inference that appellant formed the intent to take Ms. Hensley's truck only after his burglary of her apartment provided him with the keys to the truck and his fortuitous discovery of the truck parked outside. This evidence supports the trial court's implied finding that appellant harbored separate and independent intents to burglarize the apartment and steal the truck. Accordingly, section 654 had no application in this case.

Given this conclusion, we need not address respondent's contention that section 654 does not apply in this case for another reason, that being that appellant's sentence was imposed under the Three Strikes law rather than section 1170. We note merely that

Division Two of this court has come to a contrary conclusion in *People v. Danowski* (1999) 74 Cal.App.4th 815, 824.

DISPOSITION

For the foregoing reasons, the judgment is affirmed.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.